In the High Court of Uttaranchal, at Nainital.

Writ petition No. 310 of 2003(S/B)

1-State of Uttaranchal through Secretary
Medical Health and Family Welfare.
2-Chief Medical Officer Dehradun .. Petitioners

Versus

1- Chairman Public Service Tribunal Uttaranchal,
Dehradun.
2- S.S Rana, Health Supervisor Primary
Health Centre, Nehru Gram,
Dehradun ..Respondents.

Sri K.P. Upadhyaya, learned S.C. for the petitioners.
Sri K.N. Joshi, learned counsel for the respondent No. 1.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 24-03-2006

By way of this writ petition, the petitioners have prayed for issuance of a writ, order or direction in the nature of certiorari, quashing the impugned order dated 28-8-2002, passed by the respondent No. 1 (Annexure No.1 to the writ petition).

2- Brief facts of the case are that the respondent No.2 was a Graduate (B.Sc.) and joined the services as Family Planning Health Assistant under the Chief Medical Officer on 19-5-1973.

3- According to the rules, the post of Health Assistant carried two pay scales of Rs. 120-220 and Rs. 160-320 meant for Non-Graduate and Graduate employees. The respondent No.2. despite being a Graduate, was placed in the lower pay scale of Rs. 120-220, although at the time of joining he did not resist, but later on when he was apprised of the discrimination, in as much as some of his similarly qualified colleague were granted higher pay scale of Rs. 160-320, he agitated the matter and submitted the representation. The respondent No.2 feeling

aggrieved by the inaction of the department, filed the application before the Public Service Tribunal and the Public Service Tribunal vide judgment and order dated 28-8-2002, allowed the application and directed the department to place the respondent No.2 at the appropriate stage in the pay scale of Rs. 160-320 w.e.f. the date of his joining service as Family Planning Health Assistant and grant him all the consequential benefits on the pattern allowed to his similarly placed colleagues.

4- Feeling aggrieved by the aforesaid judgment and order passed by the Public Service Tribunal, the petitioners have preferred this writ petition before this court.

5- The counter affidavit was filed by the respondent No.2 stating therein that there are two pay scales for the post of Family Planning Health Assistant, one carries the pay scale of Rs. 120-220 and the second pay scale is 160-320. The service rules and various Government Orders specially provided that the Graduate and possessing other higher qualification will be observed against the post of Family Planning Health Assistant carrying the pay scale of Rs. 160-320 and those who were under Graduation will be observed against the pay scale of Rs. 120-220 and as the respondent No.2 was possessing the qualification of Graduation at the time of joining, hence he was entitled for the pay scale of Rs. 160-320.

6- The rejoinder affidavit was filed by the petitioners reiterating the facts mentioned in the writ petition.

7- Heard the learned counsel for the parties and perused the record.

8- The impugned judgment passed by the Public Service Tribunal reveals that the similarly situated colleagues of respondent No.2, who were Graduate and were placed in the lower pay scale of Rs. 120-220, filed various writ petitions for the release of higher pay scale of Rs. 160-320, before the Public Service Tribunal, Lucknow and all these petitions were allowed in favour of those colleagues of respondent No.2 and the direction was given to the State Government to grant them

the higher pay scale of Rs. 160-320. There is nothing on the record that the judgment dated 28-7-1989 passed earlier by the Public Service Tribunal, Lucknow in favour of the respondent No.2's colleagues had ever been challenged and was set aside by any competent court of law. Therefore, the impugned judgment passed by the Public Service Tribunal, appears to be completely justified and the Tribunal has committed no error or illegality by following the earlier decision passed by the Public Service Tribunal, Lucknow.

9- It appears to us that there was a basis classification in the post of Health Assistant in Family Planning for two categories, i.e., Non-Graduate and Graduates and for this purpose two different pay scales were there. It is not denied that there was a Government Order envisaging the Government Scheme to grant higher pay scale of Rs. 160-320 to the Graduate employees recruited as Family Planning Health Assistant. Therefore, on a careful consideration of the entire material on record, we are inclined to sustain the case of the respondent No.2, because of his propagation that he was a Graduate at the time of taking up the assignment of Family Planning Health Assistant. As we have already observed that in the cadre the Government has devised two pay scales, one for Graduate and the other for Non-Graduate, of course the basic qualification was Intermediate, but the rationale behind this classification was the academic qualification, whose logic was not challenged by anyone.

10- We do not find any ground for interference in the impugned judgment and order passed by the Public Service Tribunal. We are also of the view that this petition lacks merit and is liable to be dismissed. The direction issued by the Public Service Tribunal by way of impugned judgment dated 28-8-2002 to consider respondent No.2 for granting the pay scale of Rs. 160-320 w.e.f. the date of his joining service as Family Planning Health Assistant and grant him all the consequential benefits on the pattern allowed to his similarly placed colleagues by the earlier judgment passed by the Public Service

Tribunal, Lucknow, is completely justified and does not require any interference.

11- Accordingly the writ petition is dismissed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB